

CITY OF SAN JOSÉ, CALIFORNIA
Department of Planning, Building and Code Enforcement
801 North First Street, Room 400
San José, California 95110-1795

STAFF REPORT

Hearing Date/Agenda Number
P.C. 1/28/04 Item: .

File Number
CP 03-042

Application Type
Conditional Use Permit

Council District
10

Planning Area
Almaden

Assessor's Parcel Number(s)
701-53-037

PROJECT DESCRIPTION

Completed by: Lori Moniz

Location: Northeast corner of Almaden Expressway and Via Valiente (6920 Almaden Expressway)

Gross Acreage: 6.55

Net Acreage: 6.55

Net Density: N/A

Existing Zoning: CP Pedestrian Commercial

Existing Use: Retail shopping center w/existing monopole

Proposed Zoning: No change

Proposed Use: Retail shopping center and extension of height for an existing monopole for additional wireless communications antennas

GENERAL PLAN

Completed by: LM

Land Use/Transportation Diagram Designation
Neighborhood/Community Commercial

Project Conformance:
☒ Yes ☐ No
☐ See Analysis and Recommendations

SURROUNDING LAND USES AND ZONING

Completed by: LM

North: Single-family detached residential

R-1-5 Single-Family Residence Zoning District

East: Single-family attached residential

R-2(PD) Planned Development Zoning District

South: Single-family detached residential

R-1-5 Single-Family Residence Zoning District

West: Single-family detached residential

A(PD) Planned Development Zoning District

Completed by: LM

☐ Environmental Impact Report found complete
☐ Negative Declaration circulated on _____
☐ Negative Declaration adopted on _____

☒ Exempt
☐ Environmental Review Incomplete

FILE HISTORY

Completed by: LM

PUBLIC AGENCY COMMENTS RECEIVED

Completed by: LM

Department of Public Works

No comments received.

Other Departments and Agencies

See attached memorandum from the City of San José Fire Department

GENERAL CORRESPONDENCE

None received.

ANALYSIS AND RECOMMENDATIONS

BACKGROUND

The applicant, AT&T Wireless, is requesting a Conditional Use Permit to allow an increase in the height of an existing monopole from 50 feet to 60 feet and the installation of three (3) new antenna panels. The Zoning Ordinance requires a Conditional Use Permit for a wireless telecommunications facility in the CP Pedestrian Commercial Zoning District.

The project site is located in Almaden Valley at the northeast corner of Almaden Expressway and Via Valiente. The subject existing monopole, approved in 1990 (File No. CP90-063), is located within the rear service area of an existing neighborhood shopping center.

In 1996, Planning staff explored the issues of electromagnetic radiation to determine if emissions from the proposed antennas posed a public health hazard. Staff found that the low-frequency, low energy, non-ionizing emission associated with wireless communications antennas were well below the recognized safety standards set by the American National Standards Institute (ANSI). Staff concluded there was no evidence that such transmission would result in adverse health effects to people living or working in the vicinity of the antennas. Further, Staff investigated reports that wireless communication transmission interfered with hearing aids, pace makers, and other electronic devices. Staff determined the reported interference resulted from cordless telephones and not from antennas.

PROJECT DESCRIPTION

The proposed project extends an existing 50-foot monopole to 60-feet and would include three (3) flush mounted panel antennas located at the top. Currently the existing monopole consists of three wireless telecommunication antennas that protrude outward from the monopole. These antennas

ENVIRONMENTAL REVIEW

Under the provisions of Section 15301 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA) as stated below, this project is found to be exempt from the environmental review requirements of Title 21 of the San José Municipal Code, in that the project consists of a minor alteration of an existing structures, involving negligible or no expansion of use.

GENERAL PLAN CONFORMANCE

The proposed use is consistent with the San José 2020 General Plan Land Use/Transportation Diagram designation of Neighborhood Community/Commercial in that wireless communication antennas/monopoles developed in conformance with the Zoning Ordinance and applicable City policy are considered an appropriate land use on commercially designated properties.

ANALYSIS

The key issues analyzed for the proposed project are conformance with the following: 1) Zoning Ordinance, and 2) City Council Policy 6-20 for Wireless Communication Facilities.

Conformance to the Zoning Ordinance

The CP Pedestrian Commercial Zoning District has a standard maximum building height limit of 50 feet. However, the Zoning Ordinance allows for the increase in the height of telecommunication facilities (monopoles) above the standard height limit in the Commercial Zoning Districts, to a maximum of 60 feet, provided that the design of the structure is a “slim pole”. The overall height of the proposed monopole will not exceed 60 feet. The proposed height extension of the existing monopole utilizes a “slim pole” design. The existing antenna panels which currently extend out from the monopole will be remounted to be flush with the pole to create a more slender appearance to the existing monopole.

Conformance to City Council Policy 6-20 for Wireless Communications Facilities

Visual Impacts

The City Council Policy encourages the sharing or co-location of a single monopole by two or more communication companies to help reduce the overall visual impact of the development of wireless antenna networks. This project, with the proposed height extension, would allow two unrelated carriers to locate on one monopole. As previously indicated, the design of the existing monopole will be

buildings (such as monopoles) is 100-feet. As previously indicated, the Zoning Ordinance allows for slim pole antennas up to a maximum height of 60-feet.

Setbacks from Residential Uses

The policy requires that freestanding monopoles should be located no closer than a distance equal to one foot for every one foot of structure height from any parcel developed for use as a single-family or multi-family residence. Also, substantial landscaping (10 feet minimum), generally including trees, should be provided adjacent to the residential property line, to buffer the adjoining residential uses. The applicant's proposal is consistent with the Council Policy in that the existing monopole would be located in excess of 60 feet from the nearest residential uses located to the east of the site and that a landscape buffer with trees already exists.

Performance Standards

This project does not include the installation of power-generating equipment. Should the applicant wish to include such equipment in the future a development permit would be required and the equipment would be required to meet the performance standards for the Zoning District.

Parking

The project will not reduce the number of required parking spaces for the existing shopping center.

Conclusion

The proposed project will improve the overall design of the existing monopole and accomplished all of the key design objectives of the City's policy for such structures. In anticipation of further on-going improvements in technology related to the wireless communications industry, it may be very likely that service providers will be able to maintain, improve or expand their service network by way of antennas facilities that are even less obtrusive than typically accomplished today. As previously indicated, unlike recent proposals for wireless communications facilities, this permit did not include an expiration date whereby the permit would need to be renewed or improvements removed. This permit, which will supercede the previous approval is proposed to include a five (5) year time limit so that the City can re-evaluate the appropriateness of the facility in the context of future improvements to antenna technology.

RECOMMENDATION

2. The project site is located in the CP Pedestrian Commercial Zoning District.
3. Under the provisions of Section 15301 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this project is exempt from environmental review requirements.
4. Residential uses surround the subject site.
5. The project proposes the height extension of an existing wireless telecommunications antenna (monopole) from 50 feet to 60 feet.
6. The City Council Land Use Policy for Wireless Communications Facilities is applicable to this application.
7. The proposed project maintains adequate setbacks of at least 60 feet horizontally from residential uses.
8. The new ancillary equipment will be accommodated by the existing shelter near the base of the monopole.
9. The proposed project will not eliminate required parking.
10. The three existing roof mounted AT&T omni antennas will be removed as part of this project.
11. The existing outboard-style antennas will be remounted so that the overall monopole maintains a “slim pole” design.
12. This permit will supercede the previously approved Conditional Use Permit (File No. CP90-063).

This Planning Commission concludes and finds, based upon an analysis of the above facts that:

1. The proposed project is consistent with the adopted San José 2020 General Plan Land Use/Transportation Diagram of Neighborhood/Community Commercial.
2. The proposed project complies with all applicable provisions of the Zoning Ordinance.
3. The proposed project is in compliance with the California Environmental Quality Act.

- in the surrounding area; or
- b. Impair the utility or value of property of other persons located in the vicinity of the site; or
 - c. Be detrimental to public health, safety or general welfare; and
2. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding areas; and
3. The proposed site is adequately served:
- a. By highways or streets of sufficient width and improved as necessary to carry the kind and quality of traffic such use would generate; and
 - b. By other public or private service facilities as are required.

In accordance with the findings set forth above, a Conditional Use Permit to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby granted. This Planning Commission expressly declares that it would not have granted this permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

CONDITIONS PRECEDENT

This Conditional Use Permit shall have no force or effect and the subject property shall not be used for the hereby permitted uses unless and until all things required by the below-enumerated precedent conditions shall have been performed or caused to be performed and this Resolution has been recorded with the County Recorder.

1. **Acceptance and Payment of Recording Fees.** The "Acceptance of Permit and Conditions" form shall be **signed, notarized, and returned** to the Department of City Planning within **60 days** from the date of issuance of the resolution granting the permit. *Failure to do so will result in this permit automatically expiring regardless of any other expiration date contained in this permit.* Fees for recording a Certificate of Permit with the Recorder for the County of Santa Clara must be submitted along with the Acceptance Form.

Code, Title 24).

2. **Subsequent Permit Adjustment Required.** Prior to the issuance of a building permit and within 90 days of the issuance of this permit for the proposed project, the developer shall secure and agree to implement a permit adjustment that converts all existing outboard-mounted antenna panels to a flush-mounted design to the satisfaction of the Director of Planning. Failure to secure said adjustment within 90 days shall render this Conditional Use Permit null and void.
3. **Permit Superseded.** This Permit supercedes approval under file CP99-067.
4. **Nuisance.** This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.
5. **Construction Hours.** Construction shall be limited to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday.
6. **Lighting.** This permit allows no new on-site lighting.
7. **Generators.** This permit does not approve any emergency/back-up generators on site. Any proposed emergency/back-up generators will require Planning approval.
8. **Colors and Materials.** All wireless communications antennas colors and materials are to be those specified on the approved plan set.
9. **Outside Storage.** No outside storage is permitted for the project.
10. **Building Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:
 - a. *Construction Plans.* This permit file number, CP03-042, shall be printed on all construction plans submitted to the Building Division.
 - b. *Subsequent Adjustment Required.* Prior to the issuance of a Building Permit, the developer shall comply with condition #2 of this permit.
 - c. *Emergency Address Card.* The project developer shall file an Emergency Address Card, Form 200-14, with the City of San José Police Department.

shall re-inter the human remains and items associated with Native American burials on the property in a location not subject to further subsurface disturbance.

- e. *Construction Conformance.* A project construction conformance review by the Planning Division is required. Planning Division review for project conformance will begin with the initial plan check submittal to the Building Division. Prior to final inspection approval by the Building Department, Developer shall obtain a written confirmation from the Planning Division that the project, as constructed, conforms with all applicable requirements of the subject Permit, including the plan sets.
- 11. **Anti-Graffiti.** The applicant shall remove all graffiti from structures and fence surfaces within 48 hours of defacement.
- 12. **Equipment Removal.** The applicant shall remove the wireless communications antennas and associated equipment enclosure from the site at such time as the equipment is no longer in use.
- 13. **Co-location.** The applicant and wireless communication facility operator shall facilitate the future co-location of wireless communication antennas on this tower. The applicant and wireless communication facility operator shall notify the Director of Planning of any proposals by other wireless communication providers to collocate antennas on this tower. The notification shall occur within 30 days of receipt of the proposal, and shall include the file number of this Permit. A Planning Permit Adjustment is required for the co-location of antennas on the existing monopole.

CONDITIONS SUBSEQUENT

- 1. **Permit Expiration.** This Conditional Use Permit shall automatically expire two years from and after the date of adoption of the Resolution by the Planning Commission, or by the City Council on appeal, granting this Permit, if within such two-year period, the proposed use of this site or the construction of buildings has not commenced, pursuant to and in accordance with the provisions of this Conditional Use Permit. The date of adoption is the date the Resolution granting this Conditional Use Permit is approved by the Planning Commission. However, the Director of Planning may approve a Permit Adjustment to extend the validity of this Permit for a period of up to two years. The Permit Adjustment must be approved prior to the expiration of this Permit.
- 2. **Time Limit.** This Conditional Use Permit expires and has no further force or effect five (5) years from the date of this Permit. Upon the expiration of this permit all equipment and associated structures shall be removed.

suspended or modified by the Planning Commission, or by the City Council on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 3, Chapter 20.44, Title 20 of the San José Municipal Code it finds:

- a. A violation of any conditions of the Conditional Use Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
- b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
- c. The use as presently conducted creates a nuisance.

c: Building Division (2)

207-10/LM